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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Implementation of Sections 3(n) and )  
332 of the Communications Act )

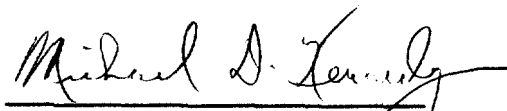
Regulatory Treatment of Mobile Services )

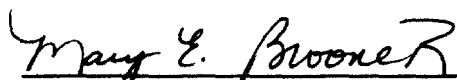
GN Docket No. 93-252

**COMMENTS OF MOTOROLA, INC.**

Motorola, Inc. (hereinafter Motorola) submits the following comments in response to the above captioned Notice of Proposed Rule Making. Motorola urges the Commission to adopt a regulatory structure that (1) preserves radio spectrum for private, internal mobile communications purposes, (2) regulates like services in a like manner while recognizing the functional differences between the various for-profit mobile services, (3) preserves the existing case-by-case approach for classifying space segment mobile services as common carriers or non-common carriers, and (4) minimizes to the greatest extent possible the level of common carrier and state regulation imposed upon all mobile service operators. In proceeding in this fashion, the Commission will continue to encourage the remarkable growth of the mobile services in offering new and diverse service options to the American consumer and improving the operational efficiencies of American businesses.

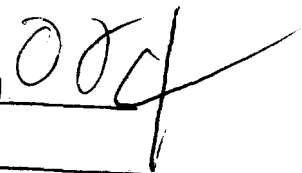
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## **I. INTRODUCTION AND SUMMARY**

Motorola hereby files its comments in response to the Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1</sup> As a leading manufacturer of equipment for both private and common carrier mobile radio licensees, Motorola has a strong interest in furthering the efforts of Congress and the Commission to promote the development of a robust and competitive mobile services marketplace. To achieve this common goal, the Commission should adopt rules and policies that preserve important private uses of the spectrum, treat functionally equivalent providers in a comparable manner, and eliminate unnecessary regulatory burdens on all radio users.

The Commission initiated this proceeding in response to a Congressional mandate directing the agency to implement Sections 3(n) and 332 of the Communications Act as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993.<sup>2</sup> In relevant part, Title VI amends Sections 3(n) and 332 to establish a new comprehensive framework for the regulation of mobile radio services. These amendments were motivated by Congress' recognition that the mobile services marketplace is a highly competitive and critical component of the nation's information infrastructure.<sup>3</sup>

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<sup>1</sup> Notice of Proposed Rule Making, GN Docket No. 93-252, 58 Fed. Reg. 53169 (October 14, 1993)[hereinafter Notice].

<sup>2</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b), 107 Stat. 312, 392 (1993)("Budget Act").

<sup>3</sup> See H.R. Rep. No. 111, at 27, 103rd Cong. 1st sess. 260 (1993) [hereinafter House Report], reprinted in 1993 U.S.C.C.A.N. 373,587.

To foster the continued growth and development of the mobile radio marketplace, Congress determined that (1) the dynamic nature of mobile telecommunications requires the adoption of new standards that will guarantee regulatory parity between and among like mobile service providers; (2) the highly competitive nature of mobile radio service warrants broad FCC forbearance from the full force of Title II common carrier regulation; and (3) the importance of wireless/mobile telecommunications services to the national information infrastructure necessitates federal preemption of state entry and rate regulation.<sup>4</sup>

Consistent with these Congressional directives, the Commission now solicits commenters' views on proposals that (1) address the definitional issues raised by the Budget Act; (2) set forth the principles for distinguishing between private and commercial mobile services; (3) delineate the provisions of Title II common carrier regulation that will be applied to commercial mobile service providers and those that will be forborne; and (4) discuss the standards for reviewing petitions to extend state regulatory authority.

As reflected in its comments, Motorola submits that the public interest will best be served through regulatory actions that:

- ensure that spectrum allocated for the private needs of government and businesses is not converted to commercial use or subjected to common carrier regulation;

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<sup>4</sup> See generally Budget Act, § 6002(b), 107 Stat. 392-95.

- provide that functionally equivalent services are subjected to similar regulatory treatment while recognizing the intent of Congress to exclude certain "traditional" Specialized Mobile Radio (SMR) service operations from classification as commercial mobile service;
- preserve the existing case-by-case approach used by the FCC for setting those policies and procedures that determine the regulatory classification of space segment providers for mobile services;
- eliminate unnecessary federal or state regulation of commercial mobile services.

**II. IN DEFINING COMMERCIAL MOBILE SERVICE, THE COMMISSION SHOULD ENSURE THAT SPECTRUM ALLOCATED FOR PRIVATE USES IS NOT CONVERTED TO COMMERCIAL USE OR SUBJECTED TO COMMON CARRIER REGULATION**

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Throughout the years, the Commission has acknowledged the legitimate spectrum needs of specialized users and industries whose mobile communications requirements are not adequately served by third party service providers. The numerous private services that have developed to meet these needs should not be subordinated to the commercial interests of for-profit service providers. It is thus of paramount importance that the Commission take no action in this proceeding that may threaten the availability and viability of private uses of the spectrum in favor of carrier-based operations.

Motorola recognizes that the regulatory changes prompted by Congress will likely result in some existing private land mobile systems being reclassified as commercial mobile services. Indeed, the Commission is seeking comment on how commercial mobile services and private operations can co-exist on the same

frequencies.<sup>5</sup> In answering these questions, Motorola urges the Commission to adopt and apply definitions for commercial mobile service and private mobile service that do not undermine or impair the legitimate interests of the successful and critically important private land mobile user community.

**A. The Commercial Mobile Service Definition  
Should Not Encompass Genuinely  
Private Services**

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As revised, Section 332 of the Communications Act categorizes all mobile services as either a "commercial mobile service" or a "private mobile service."<sup>6</sup> Section 332(d)(1) establishes a three-pronged test, each prong of which must be met before a service will be classified as commercial mobile service ("CMS"). In brief, the test requires that an offering must be for a "for profit," "interconnected service" available "to the public" or to "such classes of eligible users as to be effectively available to a substantial portion of the public."<sup>7</sup> Motorola submits that these elements should not be defined so broadly or applied so literally that they sweep within the CMS classification legitimately private services used for the licensee's own internal needs.

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<sup>5</sup> Notice, ¶ 40.

<sup>6</sup> In this regard, Motorola agrees with the Commission's tentative conclusion that new Section 332 applies to all existing mobile services identified in paragraph 9 of the Notice. However, while terrestrial mobile satellite services fall within this definition, the Commission should clarify that mobile satellite space segment capacity will continue to be regulated under Part 25. Congress explicitly authorized the Commission to continue regulating space segment capacity in the existing manner. See *infra*, page 13, for a further discussion on the appropriate regulatory treatment of mobile satellite service.

<sup>7</sup> In turn, "interconnected service" is defined as "service that is interconnected with the public switched network" or "for which an interconnection request is pending under Section 332(c)(1)(B)." 47 U.S.C. § 332(d)(2).

**For-Profit Service:** Although the legislative history offers no direction with respect to the interpretation of the "for-profit" test for CMS, Motorola suggests that Congress intended for this term to refer only to those providers whose primary service offering is proffered to third parties for compensation. As such, neither the provision of for-profit service on an ancillary basis nor the management of communications systems by paid managers should be considered "for-profit" offerings under Section 332.<sup>8</sup>

**Interconnection:** In paragraph 14 of the Notice, the Commission requests comment on whether "interconnected service" should be interpreted to distinguish between those systems that are physically interconnected to the public switched network and those that are not only physically interconnected, but that also make "interconnected service" available. In practice, this distinction may prove difficult to apply. Consequently, Motorola suggests that greater regulatory certainty might be ensured by simply defining "interconnected service" as physical interconnection with the public switched network.

In addition, the Commission should apply the traditional definition of "public switched telephone network" in describing "public switched network." Under this definition, "public switched network" would encompass all services offered by local

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<sup>8</sup> In addition, Motorola urges the Commission to look to the nature of the service as a whole in determining its for-profit status. In Motorola's view, for a for-profit offering to be "ancillary" on a private system, the majority of the mobile units authorized to operate on that system would have to be used to meet the internal mobile communication needs of the private licensee. Motorola submits that classification based on the service as a whole is essential if the Commission hopes to avoid creating loopholes that result in disparate regulatory treatment of competing providers.

exchange telephone companies and interexchange carriers in the provision of basic exchange service and MTS.<sup>9</sup> It should not include the facilities of mobile carriers.

**Public Availability:** Motorola agrees with the Commission's suggestion that the "availability" prong of the definition of CMS is met if (1) the service is offered to the public without restriction, or (2) the eligibility rules for users are so broad as to constitute a substantial portion of the public.<sup>10</sup> For example, the rules governing user eligibility for the Specialized Mobile Radio Service (SMRS) and private carrier paging (PCP) operations impose no practical limitation as to whom may be served. Consequently, these services would be considered to be available on such a broad basis.<sup>11</sup>

In contrast, services restricted to limited population segments such as government or specific industry sectors should not be classified as being available to a substantial portion of the public. Similarly, customized service offerings tailored to satisfy the individual needs of a single customer or a small group of customers would not satisfy the public availability prong of the CMS test. In our view, while factors such as system capacity and service area size may be useful in determining whether a particular offering is the "functional equivalent" of a CMS,<sup>12</sup> they are inappropriate

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<sup>9</sup> See Notice, ¶ 22.

<sup>10</sup> Notice, ¶¶ 23-24.

<sup>11</sup> Notice, ¶ 24. Such services may still merit classification as private for other reasons, however.

<sup>12</sup> See Notice, ¶ 26; *infra*, page 9.



mechanisms for determining public availability, which appears to focus more on user eligibility.

**B. Services That Are Not The Functional Equivalent of Other Commercial Mobile Services Should Be Regulated as Private Land Mobile Services**

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New Section 332(d)(3) of the Communications Act defines a "private mobile service" as any mobile service that is not a commercial mobile service, as defined in Section 332(d)(1), or the "functional equivalent of a commercial mobile service."

Under this standard, "private mobile service" includes all mobile services that do not constitute a for-profit offering of interconnected service to the public or to such classes of eligible users so as to constitute a substantial portion of the public.

In addition, the legislative history of the Budget Act makes clear that Congress intended to give the Commission the authority to classify as private a mobile service that might satisfy the literal definition of a CMS, but whose offering does not constitute the "functional equivalent" thereof.<sup>13</sup> In particular, the Conference Report states that the Commission:

may determine, for instance, that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service if it is provided over a system that, either individually or as part of a network of systems or licensees, does not employ frequency or channel reuse or its equivalent (or any other techniques for augmenting the number of channels of communication made available for such mobile service) and does not make service available

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<sup>13</sup> Cf. Notice, ¶ 31.

throughout a standard metropolitan statistical area or other similar wide geographic area.<sup>14</sup>

This passage reflects a clear Congressional intent to differentiate between Enhanced SMRs (ESMRs) and other wide-area SMRs that, through frequency reuse or another augmenting technology, offer service that is the "functional equivalent" of cellular, and SMRs whose service offering is not of this same capacity. Although customers for mobile communications services choose from a range of alternative technologies, which includes both SMR and cellular systems, so called "traditional SMRs" may not serve the broad range of customers served by cellular. It follows that the exemption of so-called "traditional SMRs" from CMS regulatory status is warranted under the example in the Conference Report because these systems do not employ frequency or channel reuse (or any similar technology that augments system capacity or service area).

Notably, the Commission is not limited to the example in the Conference Report. The functional equivalence test should be applied on a case-by-case basis and should be flexible enough to permit the consideration of numerous factors. Examples of such factors might include the number of hours each day and length of time that a dispatch SMR subscriber is permitted to interconnect with the public switched network; whether the provision of digital SMR service is offered over a network of stations covering a wide geographic service area such as an MSA; and whether the network of

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<sup>14</sup> H.R. Rep. No. 213, 103rd Cong., 1st Sess. 496, reprinted in 1993 U.S.C.C.A.N. 1088, 1185.

stations allows for frequency "hand-offs" for mobile units traveling through the service area.

In this context, the Commission should be careful not to constrain private land mobile system operators from deploying "techniques for augmenting the number of channels" by universally viewing use of such techniques as creating a commercial mobile service. Traditional private land mobile operators deserve the opportunity to utilize advanced technologies. Although the use of such technologies would increase station capacity, the technology used would not necessarily result in the functional equivalent of commercial mobile service.

\* \* \* \* \*

The preceding discussion provides the Commission with basic guidelines for defining various radio services as either commercial mobile or private land mobile service. Attached as Appendix A is a table that catalogs Motorola's analysis of the appropriate regulatory classification for various forms of mobile radio services under these criteria. Motorola urges the Commission to adopt the classifications suggested therein in order to promote both regulatory parity as well as the needs of private land mobile users.

In this regard, Motorola notes the Commission's tentative conclusion that no single regulatory classification should be applied to personal communication services ("PCS").<sup>15</sup> As the Commission surmised in its recent decision on 2 GHz PCS services, the term PCS covers "the widest possible range" of communications serving

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<sup>15</sup> Notice, ¶ 45.

"both business and individuals."<sup>16</sup> Under this accurate perception, it is clearly inappropriate to classify all PCS service offerings as falling under one regulatory heading or the other. Accordingly, Motorola supports the proposal to allow PCS licensees to choose whether to offer commercial or private mobile service.<sup>17</sup> Flexible service options will serve the public interest by promoting full spectrum utilization and a diverse range of customer choices. Indeed, the demand for certain PCS services will vary across different areas of the United States. Providing regulatory flexibility will allow PCS licensees to tailor services that satisfy all demands of the marketplace. With respect to the implementation of self-designation, Motorola favors a simple regulatory approach that merely requires licensees to follow the applicable rules and policies when offering a particular service on its authorized spectrum.<sup>18</sup>

Within the context of how existing land mobile services should be classified, the Commission has also requested comment on whether existing common carriers that are classified as commercial mobile services should be allowed to provide dispatch service.<sup>19</sup> The amended Sections 3(n) and 332 of the Communications Act could result in services which have traditionally offered dispatch as well as services prohibited from offering dispatch being similarly regulated as commercial mobile services. Should this result occur, as it would, for example, for cellular and ESMRs

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<sup>16</sup> Second Report and Order, Gen Docket No. 90-314, released October 22, 1993.

<sup>17</sup> Notice, ¶ 46.

<sup>18</sup> In addition, individual PCS licensees should be allowed to use their spectrum to offer both CMS and private mobile services provided that each service is offered under the applicable rules for the appropriate regulatory classification.

<sup>19</sup> Cf. Notice, ¶ 42.

under Motorola's suggested classifications, Motorola recommends that the prohibition against dispatch by existing common carriers be lifted when the grandfathering of private systems ends in 1996.<sup>20</sup> In our view, a transition period is necessary, and that offered for the grandfathering of private service that will become commercial mobile services is a logical parallel transition for lifting the dispatch prohibition.

**C.    The FCC Should Continue to Decide Whether to Regulate Space Segment Licensees for Mobile Services as Common Carriers or Non-Common Carriers on a Case-By-Case Basis.**

With respect to the provision of space segment capacity for mobile services, the Commission tentatively concludes (at paragraph 43 of the Notice) that it should continue its existing policy of making the decision about whether to regulate space segment licensees on a common carrier or non-common carrier basis on a case-by-case basis, and, that it should continue to apply the same factors it has used in the past to reach such a decision. In contrast, where a space segment licensee proposes to provide commercial mobile service directly to end users, the Commission proposes to regulate the space segment licensee as a common carrier. Further, the Commission tentatively concludes that provision of commercial mobile service to end users by ground segment licensees (earth station licensees or service providers who resell space segment capacity) should be regulated on a common carrier basis. As an applicant for a license to build a Mobile Satellite Service called IRIDIUM™, Motorola agrees with the Commission's analysis and its tentative conclusions.

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<sup>20</sup> 47 U.S.C. § 332(c)(2).

The Commission properly recognizes that continuing to exercise its discretion on a case-by-case basis for regulating space segment licensees is consistent with the language and intent of the Act. New Section 332(c)(5) of the Act states in pertinent part that "nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage." This language recognizes that, as a general matter, space segment providers will not meet the definitional test for regulation as a "commercial mobile service" set forth in new Section 332(d)(1) of the Act because they merely offer bulk capacity to gateway earth station operators. It is the gateway operator, not the space segment provider, who may be operating as a commercial mobile service provider by virtue of offering service to a "substantial portion of the public" and being "interconnected with the public switched network." Therefore, it is the gateway operator that should be regulated as a common carrier.<sup>21</sup>

From a policy standpoint, the Commission's existing procedure of making case-by-case determinations in regulating space segment licensees should be continued because it has served the public interest well and has not resulted in any shortages of space segment capacity.<sup>22</sup> Non-common carrier treatment of satellite services

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<sup>21</sup> Thus, for example Motorola Satellite Communications, Inc., as licensee of the IRIDIUM™ system, would act strictly as a wholesaler of space segment capacity, that is, it would provide such capacity only to gateway operators who, in turn, would be interconnected with the public switched network and provide service to end users, either directly or through other service vendors such as cellular operators.

<sup>22</sup> In determining whether to allow space segment capacity to be provided on a non-common carrier basis, the Commission considers the extent to which sufficient capacity is being provided by others. See (continued...)

encourages the development of satellite systems by expanding the list of sources available for financing.<sup>23</sup> Non-common carrier treatment also fosters the growth and development of customized satellite services.<sup>24</sup>

When it comes time for the Commission to exercise its discretion on how MSS systems above 1 GHz (i.e., "Big LEOs") should be regulated, the FCC should conclude that these systems be permitted to operate on a non-common carrier basis. Apart from the benefits cited above in connection with non-common carrier treatment, common carrier regulation of Big LEO/MSS space segment licensees is not warranted under the two-prong test set forth by the court in NARUC I for determining whether a service may be provided on a non-common carrier basis.<sup>25</sup>

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<sup>22</sup>(...continued)

Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238, 1256 (1982), aff'd, Wold Communications, Inc., 735 F.2d 1465 (D.C. Cir. 1984).

<sup>23</sup> Thus, as Commissioner Barrett observed in his Separate Statement in connection with the Commission's recently adopted service and licensing rules for Little LEOs, classifying Little LEOs as non-common carriers will facilitate the process of coordinating access to spectrum in foreign markets. See News Release, Report No. DC-\_\_\_, October 21, 1993 (adopting Report and Order in CC Docket No. 92-76). The Commission specifically decided not to require MSS licensees in that service to provide system access to commercial mobile service providers on a common carrier basis.

<sup>24</sup> For example, as the Commission correctly recognizes in footnote 61, it had determined in the case of the RDSS that "common carrier obligations would impede the ability of mobile satellite service operators to tailor services to meet their customers' needs." Second Report and Order, GN Docket No. 84-689, 104 FCC 2d 665, 665-666 (1986).

<sup>25</sup> In National Association of Regulatory Utility Commissioners v. FCC 525 F.2d 630, 642 (D.C. Cir.) cert. denied, 425 U.S. 999 (1976), the court identified two criteria as determinative of whether a service may be provided on a non-common carrier basis: (1) whether there is or should be any legal compulsion to serve the public indifferently, and (2) if not, whether there are reasons implicit in the nature of the service to expect an indifferent holding out to the eligible user public.

The first prong of the NARUC test requires asking whether there is a public interest reason to compel Big LEO/MSS space segment licensees to serve the public indifferently.<sup>26</sup> Here that is unnecessary, because there will be sufficient competitive MSS space segment capacity available to ensure that demand for MSS services will be satisfied and that rates will be reasonable without common carrier treatment. The spectrum sharing plans that have recently been presented to the Commission permit multiple competitive Big LEO MSS space segment operators. Moreover, Big LEOs will face competition from multiple Little LEO systems<sup>27</sup> as well as from AMSC, the geostationary MSS system previously authorized by the Commission.<sup>28</sup>

The second prong of the NARUC I test requires asking whether there is something in the nature of Big LEO/MSS space segment services that leads to the conclusion that space system operations will indifferently offer space segment capacity to the public. At least in the case of the IRIDIUM™ system, space segment will never be offered directly to the public, but only to selected gateway operators who have invested heavily in the system. In fact, it would be technically impossible for Iridium™

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<sup>26</sup> To the extent that the Commission finds that there are public interest reasons for requiring that MSS services be provided to the public indifferently, it is the gateway licensee rather than the space segment provider who should be legally compelled to render service on a common carrier basis because end users will obtain MSS services either directly from the gateway operator or from a service provider/MSS reseller who will obtain capacity from the gateway operator.

<sup>27</sup> The Commission's recently adopted service and licensing rules for Little LEOs provide for multiple entry. Little LEOs will compete with Big LEOs in the provision of such services.

<sup>28</sup> See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 1543 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992). Motorola notes that although the Commission adopted rules requiring non-dominant common carrier regulation of AMSC, that decision was made at a time when AMSC would have been the only MSS operator licensed in the U.S. See Second Report and Order, 2 FCC Rcd 485 (1987).



space segment capacity to be offered indifferently to the public because only a small number of gateways in the U.S. can access the satellites at the same time.<sup>29</sup>

Finally, with respect to regulation of ground segment licensees, Motorola agrees with the Commission's tentative conclusion that it is appropriate to regulate the provision of commercial mobile service by earth station licensees or MSS resellers to end users on a common carrier basis, subject to forbearance. However, in view of the global nature of Big LEO/MSS service, Motorola urges the Commission to issue promptly a Further Notice of Proposed Rulemaking in this proceeding dealing with regulation of international services.<sup>30</sup> Motorola believes that the level of competition in the international commercial mobile services marketplace will be sufficient to justify forbearance in that arena as well.

### **III. THE COMMISSION SHOULD ELIMINATE UNNECESSARY REGULATION OF COMMERCIAL MOBILE SERVICE PROVIDERS**

#### **A. Title II Regulation**

Because of the competitive nature of the CMS marketplace, Title II regulation is generally unnecessary, and Motorola urges the FCC to exercise fully its forbearance authority under the new statute. The mobile telephone market is becoming increasingly

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<sup>29</sup> As a practical matter, even if the space segment capacity were offered on a common carrier basis, end users would still obtain service directly from an MSS service provider, and MSS service providers would find that it makes more sense both economically and operationally for them to obtain capacity through a gateway operator than directly through their own earth station facilities. Access to MSS space segment capacity, particularly in the case of a non-geostationary MSS system having many satellites in its constellation (e.g., 66 in the case of the IRIDIUM system), requires operation of highly complex gateway facilities costing tens of millions of dollars.

<sup>30</sup> See Notice, note 79.

competitive, with as many as seven PCS licenses and enhanced SMR providers joining the two cellular carriers and numerous resellers currently operating in each market. The paging industry is even more competitive; the 80 private and common carrier channels available in the 900 MHz band alone support several thousand systems across the country and additional entry opportunities are available in other portions of the spectrum. Further, the recently authorized 900 MHz narrowband PCS licenses will provide nearly 5600 new opportunities for additional competitors to these services.

In view of the competition described above, Title II policies such as tariffing are not only unnecessary in the mobile services marketplace, but also would disserve the public interest. For example, the primary purpose of tariff regulation is to prevent unreasonable rates for consumers. The commercial mobile services marketplace, however, is sufficiently competitive that market forces will ensure that rates are kept at reasonable levels. The imposition of rate regulation in such a competitive market generally only serves to burden carriers without necessarily benefitting the public. As the FCC has found, inappropriate tariff regulation is:

not only unnecessary to ensure just and reasonable rates, but [is] actually counterproductive since it can inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond to market trends.<sup>31</sup>

The high administrative burdens of tariff regulations, coupled with the lack of benefit to the public, clearly weigh in favor of the FCC exercising its forbearance authority. Because various record keeping, reporting, accounting, depreciation, and

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<sup>31</sup> Tariff Filing Requirements for Nondominant Carriers, ¶ 2, CC Docket No. 93-36, FCC No. 93-401 (August 16, 1993) (Memorandum Opinion and Order)(footnote omitted).

transactional requirements found in Title II are intended to facilitate tariff regulation, the FCC should also forbear from enforcing these measures.<sup>32</sup>

Similarly, the Telephone Operator Consumer Services Improvement Act (TOCSIA) should also not be enforced against CMS providers because its protections are unnecessary in the mobile services marketplace. TOCSIA was designed to protect consumers from unreasonable charges by alternative operator service providers after the break-up of AT&T. Not only have these types of abuses not occurred in the mobile services market, consumers are already aware of the nature and expense of mobile service offerings. TOCSIA obligations would, thus, impose significant burdens on carriers without providing any benefits to consumers.

Finally, the Commission should forbear from requiring paging service providers to contribute to the recovery of Telecommunications Relay Service (TRS) costs. Other non-voice services, such as mobile satellite services, are exempt from both providing and funding TRS because these services are already accessible to the hearing impaired. The same is true of paging, which should be treated similarly. Moreover, this result is consistent with the Congressional intent that TRS contributions come from providers of interstate telephone voice transmission services, rather than from one-way services such as paging.

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<sup>32</sup> Similar arguments can be made for Sections 205, 211, 212, 214, 218, and 221.

## **B. State Regulation**

Revised Section 332(c)(3)(A) of the Act broadly preempts state and local entry and rate regulation of commercial mobile services. A state may, however, upon the proper showing: (a) petition the FCC before August 10, 1994 to continue rate regulation that existed as of June 1, 1993; or (b) initiate new rate regulation.<sup>33</sup>

In light of the competitive nature of the mobile services marketplace, the Commission should require states seeking authority to continue regulating rates or to initiate rate regulation to satisfy a high evidentiary threshold, particularly in areas served by multiple CMS providers. Similarly, because state regulations remain in force during the pendency of a request for continuation, the Commission should act on all such requests promptly. The expeditious resolution of pending state requests will help prevent similar operators from incurring disparate regulation solely because they happen to be in different states, thereby promoting the goal of Congress that all functionally equivalent providers be regulated in a like manner.

## **IV. OTHER ISSUES**

Motorola agrees with the Commission's tentative conclusion that the interconnection rights currently afforded to Part 22 licensees should extend equally to

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<sup>33</sup> In either case, the state must show (1) that market conditions are inadequate to protect subscribers from unjust, unreasonable, or discriminating rates; or (2) that such conditions exist and the service is a replacement for landline telephone exchange service for a substantial portion of the landline service in the state. 47 U.S.C. § 332(c)(3)(A).

all commercial mobile service providers.<sup>34</sup> These rights generally entitle Part 22 licensees to interconnection that is reasonable for the particular system and obligate good faith negotiation of the terms and conditions of interconnection.<sup>35</sup> In addition, the interconnection rights afforded to private mobile service licensees should be strengthened to ensure that these operators are able to request and receive the level of interconnection necessary to provide the type of service desired.<sup>36</sup> It is entirely within the Commission's authority under Section 201 of the Communications Act to clarify the interconnection rights of private mobile service operators to accomplish this goal.

## V. CONCLUSION

Motorola favors a regulatory approach for the mobile services that fosters true competition among like services while maintaining a high degree of respect for the needs of private radio systems. As reflected earlier in these comments, Motorola believes that the Commission will serve both the public interest and the interests of the land mobile industries by adopting policies that ensure that spectrum allocated for the private needs of users is not converted to commercial use or subjected to common carrier regulation. Also, the Commission should regulate like services in a like manner while recognizing the functional differences that exist between various forms of for-profit operations. In this regard, the Commission should recognize the intent of

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<sup>34</sup> Notice, ¶ 71.

<sup>35</sup> See Notice, ¶ 70 and n. 90.

<sup>36</sup> Notice, ¶ 72.

Congress to exclude certain "traditional" Specialized Mobile Radio (SMR) service operations from classification as commercial mobile service. In addition, the Commission should continue to decide whether to regulate space segment licensees as common carriers or non-common carriers on a case-by-case basis. Finally, the Commission should ensure that any unnecessary federal or state regulation of commercial mobile services is eliminated. In this manner, the Commission will continue to further the remarkable growth of mobile communications to the American consumer and business.

Respectfully Submitted,

Motorola, Inc.

Attachment: Appendix A

## APPENDIX A

### REGULATORY CLASSIFICATIONS OF MOBILE SERVICES UNDER NEW SECTION 332

<b>RADIO SERVICE</b>	<b>STATUS</b>	<b>REASON</b>
Cellular Radio	CMS	For profit, public offering
2 GHz PCS	CMS or Private	Subject to licensee's specific service offering(s)
Narrowband PCS	CMS or Private	Subject to licensee's specific service offerings(s)
Enhanced SMR	CMS	For profit, public offering that is functionally equivalent to cellular
SMR	Private	Not functionally equivalent to cellular
Government, Public Safety and Industrial Internal Communication Systems	Private	Not available to broad segment of public
Non-Profit Sharing Arrangements; Stations Managed by a Third Party for a Fee	Private	Not available to broad segment of public
Ancillary Offerings to Third Parties of Excess Capacity of Internal Systems	Private	Primary use is not for profit
Community Repeaters and Private Carriers	Private	Not the functional equivalent of CMS;
Part 22 Paging	CMS	For profit, interconnected public offering
Part 90 "PCP" Paging Systems	CMS	For profit, interconnected public offering
Internal Paging Systems	Private	Not available to broad segment of public
"IMTS" Services	Private	Not the functional equivalent of CMS